Legal Update Article

Calculating Withdrawal Liability Using 'Segal Blend' Violated MPPAA, Ohio Court Rules

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The use of the "Segal Blend" to calculate a company's withdrawal liability when it withdrew from a multiemployer pension plan violated the Employee Retirement Income Security Act (ERISA), as amended by the Multiemployer Pension Plan Amendments Act (MPPAA), a federal district court in Ohio has held. *Sofco Erectors, Inc. v. Trs. of the Ohio Operating Eng'rs Pension Fund*, No. 2:19-cv-2238 (S.D. Ohio May 19, 2020).

Segal Blend Calculation

The Segal Company is one of the preeminent actuarial firms servicing multiemployer pension plans. The "Segal Blend" is Segal's proprietary method of valuing a plan's unfunded vested benefits to calculate withdrawal liability by blending the plan's investment-return interest rate assumption used for funding purposes with the lower risk-free rates published by the Pension Benefit Guaranty Corporation (PBGC). (Under ERISA, an employer may incur withdrawal liability upon cessation or reduction of its obligation to contribute to a multiemployer plan. This may occur, for example, when employees decertify a union as their representative. In general, the amount of an employer's withdrawal liability is its proportionate share of the plan's unfunded vested liabilities.) Historically, the Segal Blend has been used by many of the nation's largest multiemployer plans.

Multiemployer pension plans may use the Segal Blend because it allows a lower interest rate to calculate withdrawal liability than is used for funding purposes; this almost always results in greater withdrawal liability to be assessed by the plan.

Background

In this case, the Fund assessed withdrawal liability against the employer using the Segal Blend, instead of the interest rate the Fund used to determine funding levels. In accordance with the MPPAA, the employer challenged the withdrawal liability calculations by filing for arbitration. The arbitrator upheld the Fund's use of the Segal Blend to calculate withdrawal liability. The employer and the Fund commenced actions in federal district court to vacate and enforce, respectively, the arbitrator's award. The parties then cross-moved for summary judgment.

Under ERISA, the actuarial assumptions and methods used to calculate an employer's withdrawal liability must, "in the aggregate, [be] reasonable (taking into account the experience of the plan and reasonable expectations)" and, "in combination, offer the actuary's best estimate of anticipated experience under the plan." ERISA § 4213(a)(1), 29 U.S.C. § 1393(a)(1).

The Fund's actuary admitted the rate the Fund used to determine funding levels (7.25%) was based upon "a review of past experience and future expectations taking into account the plan's asset allocation and expected returns." Instead of using this rate, the Fund used the Segal Blend, a lower rate, to compute the employer's withdrawal liability, resulting in adding nearly $1 million to the employer's withdrawal liability assessment.

Court Decision

Because ERISA required the Fund to apply the rate that took “into account the experience of the plan and reasonable expectations,” and based on the Fund actuary’s admission that the 7.25% rate was in fact the reasonably expected return, the court found using a different rate — the lower Segal Blend rate — was unlawful. Accordingly, the court ordered the Fund to recalculate the withdrawal liability using the 7.25% funding interest rate assumption, rather than the Segal Blend, and refund the difference to the employer.

Implications

This case has significant ramifications for numerous employers that are contesting their withdrawal liability or that may do so in the future. Plans that use “PBGC Rates” to calculate withdrawal liability also may be subject to challenge for the same reason as the plans using the Segal Blend. PBGC Rates are published by the PBGC quarterly for the purpose of determining the present value of accrued benefits on a termination basis. Consistent with their intended use in connection with plan termination, PBGC Rates are based upon the rate of return of low- or no-risk assets, such as bonds, and may not be representative of the “best estimate of anticipated experience under the plan.”

Sofco was represented by Gary Greenberg and Mark Gerano of Jackson Lewis.

Jackson Lewis attorneys are available if you have any questions regarding withdrawal liability or the potential effect of the district court decision.